THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 15998 OF 1994

Date: 12.12.2006

Between:

Dr. K.V.S. Subba Rao.

... Petitioner

and

Controller of Drugs, Govt. of A.P., Hyderabad and two others.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 15998 OF 1994

ORDER:

The 2nd respondent issued show cause notice dated 27.07.1994 informing the petitioner that the Drugs Inspector, Rajahmundry had inspected the dispensary of their hospital. The petitioner was asked to show cause as to how the dispensary could be operated for the sale of drugs without a valid license and without maintenance of the records and registers as provided under Section 18(c) of the Drugs and Cosmetics Act read with Rule 123 of the rules made thereunder. In reply thereto, the petitioner herein categorically stated that he was running an Orthopedic Nursing Home and that he used to purchase drugs for administering the same only to their patients and that it was not intended for sale. The petitioner contended that their Nursing Home does not come under the purview of Section 18(c) of the Drugs and Cosmetics Act or Rule 123 of the Drugs and Cosmetic Rules. The petitioner would emphasize that the drugs in their Nursing Home were not intended for sale, that the dispensary board was displayed to show its location, that it was not visible to outsiders at all and as such the allegations of the Drugs Inspector were not true. The petitioner would contend that, since the drugs used in their dispensary is exclusively for their patients and not for

sale, they are not required to maintain any stock registers, purchase, sales registers and accounts etc. The 2nd respondent, vide proceedings issued in August 1994, held that the dispensary maintained by the hospital need not necessarily sell drugs to attract the provisions of the Act and that supply of drugs itself may, or may not, be to their own patients was adequate to fall within the ambit of the law and that they were required to comply with the provisions of the statute. The petitioner would refer to the counter-affidavit filed by the respondents wherein the provisions of Schedule K under Rule 123 are extracted. Category 5 thereunder relates to drugs supplied by a Registered Medical Practitioner to his own patients of the drug specified in Schedule C. Such drugs are exempted from the provisions of chapter IV of the Act and the Rules made thereunder subject to the conditions prescribed therein.

The question as to whether the petitioner was entitled for exemption under Schedule K, whether they have complied with the conditions prescribed for such exemption or not, have not been examined by the 2nd respondent in passing the impugned order. The impugned order is bereft of reasons and reveals non-application of mind and is accordingly set aside, leaving it open to the 2nd respondent to pass a reasoned order afresh and thereafter take action against the petitioner in accordance with law.

The writ petition is allowed. However, in the circumstances, without costs.

Date: 12.12.2006 RAMESH RANGANATHAN, J

MRKR